

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

<p>SHERRY GAINES, individually and on behalf of all others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>NATIONAL WILDLIFE FEDERATION,</p> <p>Defendant.</p>	<p>Case No. 4:22-cv-11173-FKB-CI</p> <p>Hon. F. Kay Behm Mag. Curtis Ivy, Jr</p>
---	--

PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff, individually and on behalf of all others similarly situated, submits this notice of supplemental authority to apprise the Court of a recent decision relevant to the issues raised in Plaintiff's response in opposition (ECF No. 21) to Defendant's motion to dismiss (ECF No. 18):

1. On March 30, 2023, Judge Shalina D. Kumar issued a decision denying the defendant's motion to dismiss in *Batts v. Gannett Co.*, Case No. 4:22-cv-10685, ECF No. 28 (E.D. Mich. Mar. 30, 2023), a PPPA action similar to the instant matter. A copy of the *Batts* decision is attached hereto as Exhibit A.

2. In *Batts*, the court held that the plaintiffs, having adequately stated a claim for violation of the PPPA, necessarily had Article III standing to bring suit in federal court. *See Batts*, at 7 (“The Court finds that it has been conclusively established that ‘a violation of the PPPA necessarily arises from the nonconsensual dissemination of information that reflects a plaintiff’s personal reading choices, which acutely invades a statutorily protected right to privacy in such matters and, thus, inflicts harm in a concrete and particularized way[.]’”) (quoting *Pratt v. KSE Sportsman Media, Inc.*, 586 F. Supp. 3d 666, 671 (E.D. Mich. 2022)).

3. The court in *Batts* also held that the six-year limitation period found in M.C.L. § 600.5813 applied to plaintiffs’ PPPA claims, and that the limitation period was tolled for 101 days pursuant to Mich. Executive Order 2020-58 and Michigan Supreme Court Administrative Order 2020-3 (the “COVID-19 Orders”). *See id.*, at

10 (“Consistent with the now well-established rulings from courts within the circuit, the Court finds that the six-year limitations period applies to the plaintiffs’ claims.”) & 11 n.4 (finding that the six-year limitation period was tolled for 101 days pursuant to the COVID-19 Orders).

4. Finally, the *Batts* court found that the plaintiffs’ complaint contained “well-pleaded allegations that they were USA Today subscribers and that Gannett disclosed their private reader information without their authorization within the relevant time period.” *Batts*, at 13. Recognizing that it “must accept plaintiffs’ allegations as true,” the court “f[ound] that they are sufficient to state a claim for relief that is plausible on its face” and accordingly denied the defendant’s motion to dismiss pursuant to Rule 12(b)(6). *Id.* at 13; *see also id.* at 4-5 (construing defendant’s motion as a Rule 12(b)(6) motion). Notably, in reaching its decision, the court considered and rejected defendant’s arguments regarding the recent decision in *Nashel v. The New York Times Co.*, 22-cv-10633 (E.D. Mich. Oct.11, 2022). *See Batts*, at 2 n.2.

Dated: March 31, 2023

Respectfully submitted,

/s/ E. Powell Miller

E. Powell Miller (P39487)

THE MILLER LAW FIRM, P.C.

950 W. University Drive, Suite 300

Rochester, MI 48307

Tel: 248-841-2200

epm@millerlawpc.com

Joseph I. Marchese
Philip L. Fraietta (P85228)
BURSOR & FISHER, P.A.
888 Seventh Avenue
New York, New York 10019
Tel: 646.837.7150
Fax: 212.989.9163
jmarshese@bursor.com
pfraietta@bursor.com

Frank S. Hedin
David W. Hall
HEDIN HALL LLP
1395 Brickell Avenue, Suite 1140
Miami, Florida 33131
Tel: 305.357.2107
Fax: 305.200.8801
fhedin@hedinhall.com
dhall@hedinhall.com

Counsel for Plaintiff and the Putative Class

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2023, I electronically filed the foregoing documents using the Court's electronic filing system, which will notify all counsel of record authorized to receive such filings.

/s/ E. Powell Miller

E. Powell Miller (P39487)

THE MILLER LAW FIRM, P.C.

950 W. University Dr., Ste. 300

Rochester, MI 48307

Tel: (248) 841-2200

epm@millerlawpc.com